

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY**

COVE OWNERS ASSOCIATION, INC.,)	
Plaintiff,)	
)	C.A. No. CPU6-19-000104
v.)	
)	
1205 COASTAL LLC,)	
Defendant.)	
)	
)	

Submitted: July 22, 2022
Decided: October 4, 2022

Robert J. Valihura, Jr., Esq.: Attorney for Plaintiff
Richard E. Berl, Jr., Esq.: Attorney for Defendant

DECISION ON ATTORNEY FEES REQUEST

This is a debt collection matter arising out of condominium fees and assessments owed to Cove Owners Association (“Plaintiff”) by 1205 Coastal LLC (“Defendant”). After trial and post-trial written submissions, on February 24, 2022 the Court issued its decision entering judgment for Plaintiff in the amount of \$56,418.92, plus interest, plus reasonable attorneys’ fees to be determined by the Court. Plaintiff’s counsel subsequently submitted his Affidavit of Attorneys Fees. Defendant filed an objection to the amount and the supporting billing exhibits. The Court ordered Plaintiff to provide more detailed documentation, upon which the parties submitted written arguments, the last filed on July 22, 2022. For the following reasons, the Court awards Plaintiff attorneys’ fees and costs in the amount of \$24,486.10.

As the Court found in its decision after trial, the First Amendment to the applicable Cove [Condominium] Code of Regulations provides that if suit is filed to collect

assessments and judgment is obtained, “such judgment shall include interest, reasonable attorney’s fees to obtain and enforce such judgment, and costs as fixed by the court.”¹

The Court must decide the reasonableness of a grant of attorney’s fees and costs in each particular case.

The *Delaware Lawyers Code of Professional Conduct* DR-1.5 enumerates the factors to be considered in determining the reasonableness of a claim for attorney’s fees:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The fees customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.

These factors are applied by Delaware Courts in awarding attorney’s fees.² In addition, the Court also may consider the ability of the losing party to pay attorney’s fees.³

No information has been provided the Court by either party in relation to factors (2), (5) or (6), and the Court will not apply them to its fee determination in this case. Defendant implicitly concedes the reasonableness of counsel for Plaintiff’s fee rate and time billed, with the exception of certain specific items. Therefore, but for those exceptions, and based upon the Court’s own review, the Court finds Plaintiff’s request

¹See Plaintiff’s Exhibit 5, Code of Regulations, First Amendment, page 43

²*Husband S. v. Wife S.*, 294 A.2d 89, 93 (Del. 1972); *General Motors Corp. v. Cox*, 304 A.2d 57 (Del. 1973).

³*General Motors Corp. v. Cox*, 304 A.2d 57 (Del. 1973).

reasonable as to factors (1), (3), (7) and (8). The Court, however, agrees with the following exceptions raised by Defendant:

“Lien” related charges: The February 7, 2019 invoice includes charges related to obtaining a lien upon Defendant’s property. The obtainment of such a lien is not a condition precedent to the filing of an *in personam* debt action against Defendant in this Court. Indeed, any collection action on such a lien would have to be pursued in Superior Court. Accordingly, the Court disallows \$292.00 from that invoice it deems related to any lien work.

Mediator’s Fee: The parties pursued ADR mediation in the early stages of this litigation, and each party paid half of a \$2,125.00 fee charged by the mediator chosen by the parties. Plaintiff includes its half of the fee in its September 1, 2019 client bill and this fee request. “Traditionally, parties split mediators’ fees, and Delaware Courts have been reluctant to disturb this practice.”⁴ This Court likewise sees no justification for deviating from this practice in this matter, and so declines to award the \$1,062.50 half-mediator’s fee as costs.

Trial time of Plaintiff’s Counsel’s associate: Counsel for Plaintiff acknowledges his announcement on the day of trial that his client would not be seeking the billable time of his associate counsel attending trial. Accordingly, \$1,760.00 will be deducted from the fees sought.

In addition, in reviewing the billings, the Court notes that Plaintiff’s counsel seeks a total of \$1,854.75 fees and costs billed from March 30, 2020 through July 23, 2021. However, this Court’s civil docket was effectively shut down throughout this time period due to the COVID pandemic. In fact, this case’s docket reflects no entries from December 23, 2019 (a notice of service of discovery responses) through August 2, 2021 (the

⁴ *Lierenz v. McCall*, 2015 WL 1733634 (Del. Super. 2015)

scheduling of an initial September, 2021 trial date in this matter). The Bar was well aware that this Court was not scheduling motions or trials throughout this time. Indeed, this case was one of the first civil trials to be scheduled in the aftermath of the pandemic. The Court's review of the billings in this stated period reflect little or nothing that it recognizes trial or motion preparation. The Court declines to award the \$1,854.75 sought related to this time period.

Finally, in his July 22, 2022 responsive submission on this fee issue, Plaintiff's counsel requests additional fees incurred in submitting and addressing this fee request, in the amount of \$2,755.50. The Court does not find it reasonable to grant this request in this case, especially in light of DR1-5's factor (4). The judgment in this matter is for \$56,418.92. Plaintiff's original fee affidavit requested fees of \$29,455.35, more than half the judgment obtained.

Counsel for defendant has represented to the Court that the fee amount sought by Plaintiff is "almost three times what I charged the Defendant." However, the Court cannot give this representation evidentiary weight sufficient to reduce the fee request. Plaintiff's and Defendant's burdens in litigation are different and may require dissimilar time and effort. The Court is well aware of the sterling skills and reputations of both counsel, and has no doubt each has served their respective clients efficiently and ethically.

In consideration of all of the foregoing, I find Plaintiff's original fee request, less those amounts listed above, to be reasonable. The Court acknowledges that this reduced amount may not make Plaintiff "whole" in reimbursement of its fees incurred. However, Homeowners' Associations litigating the collection of unpaid assessments clearly may receive an intangible enforcement benefit in that community awareness of such actions help deter others from non-payment of obligations.

CONCLUSION

For the foregoing reasons, the Court awards attorneys' fees in the amount of \$24,486.10. Each party shall bear its own costs except as otherwise awarded in this fee amount.

IT IS SO ORDERED, this 4th day of October 2022.



Kenneth S. Clark, Jr.
Judge